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20 **UNITED STATES DISTRICT COURT**  
21 **NORTHERN DISTRICT OF CALIFORNIA**  
22 **SAN FRANCISCO DIVISION**

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24 DAVID LUMB, KYLA ROLLIER, and JENNY  
SZETO, individually and on behalf of all others  
similarly situated,

25 Plaintiffs,

26 v.

27 YODLEE, INC.,

28 Defendant.

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Case No. 3:20-cv-05991-SK

**JOINT CASE MANAGEMENT  
STATEMENT**

Judge: Hon. Sallie Kim  
Conference Date: October 23, 2023  
Conference Time: 1:30 p.m.

Pursuant to Civil L.R. 16-10(d) and the Court's notice dated August 18, 2023 (Dkt. No. 348), Plaintiffs and Yodlee, Inc. respectfully submit this updated joint case management statement (1) reporting progress and changes since the last statement was filed, (2) setting forth the parties' proposals for the remainder of the case development process, and (3) reporting the parties' views about whether using some form of ADR would be appropriate.

## I. STATUS OF DISCOVERY

### A. Plaintiffs' Position

Since fact discovery reopened on May 8, 2023, Plaintiffs have worked diligently to fill gaps in the documentary discovery record so that they can take depositions and prepare expert reports sufficiently in advance of the January 12, 2024 fact-discovery deadline. Despite Plaintiffs' best efforts, including meeting and conferring with Yodlee and PayPal at least 10 times, certain fundamental categories of documents and information remain unproduced. This has forestalled Plaintiffs' ability to move this litigation forward. As summarized below, some of the core discovery that remains outstanding includes:

1. The screens and disclosures PayPal users saw when linking bank accounts using Yodlee's Instant Account Verification ("IAV") service;
2. Basic information about what types of data Yodlee collected and stored as part of its IAV service;
3. De-identified data showing the volume and dates of account linkages, the banks involved, the linking methods used, and the categories of data collected; and
4. Copies of the data Yodlee collected from the named Plaintiffs.

While Plaintiffs are hopeful that these issues can be resolved without Court intervention, Plaintiffs anticipate that certain issues may require briefing in the coming weeks to ensure Plaintiffs receive this information with sufficient time to take depositions and prepare expert reports before fact discovery closes in January 2024. Plaintiffs have expressed to Yodlee several times their frustration over its discovery delays, and their concern that any further delay will force Plaintiffs to rush depositions without a sufficient documentary record. To be clear, Yodlee has produced *just 17* documents since discovery reopened in May 2023, belying its claims about purported discovery burden.

1       Through their *own* discovery efforts and their *own* nonparty subpoenas, Plaintiffs determined that  
 2 they did not use Yodlee's IAV service in connection with most of the twenty IAV apps they used, based  
 3 on new information about the scope and dates of Yodlee's IAV services for those apps. Plaintiffs' claims  
 4 are now focused on PayPal, Charles Schwab, and Amazon Pay. Yodlee's attempt below to deflect blame  
 5 for its discovery delays through misstatements and unsupported rhetoric is inappropriate. Plaintiffs will  
 6 address the specifics of Yodlee's discovery delays on an issue-by-issue basis in the sections that follow  
 7 and in forthcoming briefing.

8           **B. Yodlee's Position**

9       Discovery since the last case management statement has confirmed that Plaintiffs had no basis for  
 10 the vast majority of their claims about Yodlee's IAV clients, with the burden of those misfires falling  
 11 disproportionately on Yodlee. On June 2, Plaintiffs identified twenty apps with which they claimed to  
 12 have used Yodlee's IAV service.<sup>1</sup> Now, after months of discovery and fact investigation, including  
 13 Plaintiffs' subpoenas to dozens of Yodlee's clients, and after a series of voluntary dismissals by Plaintiffs  
 14 (Dkt. Nos. 324, 326-28), only half of the original Plaintiffs remain in the litigation. Those remaining  
 15 Plaintiffs used the IAV service with (at most) three apps – PayPal, Charles Schwab, and (possibly)  
 16 Amazon Pay. None of those Plaintiffs used Yodlee's IAV service with any other app, yet Yodlee has had  
 17 to expend considerable resources, including hundreds of hours of employee and attorney time, chasing  
 18 down dead ends and producing client information to which, as it turns out, Plaintiffs were never entitled.

19       It has been nearly nine months since the Court encouraged Plaintiffs to get their unique identifiers  
 20 from PayPal so Yodlee can investigate their claims. (Dkt. No. 282 at 7:8-22.) *Only three days ago,*  
 21 Plaintiffs provided codes purporting to be their PayPal GUIDs; Yodlee searched its PayPal database for  
 22 those codes and found no information related to Plaintiffs. Plaintiff Clark still has not provided any GUID  
 23 or other information to show that he even used Yodlee's IAV service with Amazon Pay.<sup>2</sup>

24  
 25       <sup>1</sup> Amazon Pay, Charles Schwab, E-Trade, Google Pay, Merrill Edge, Square, Uber, Tally,  
 26 Vanguard, Venmo, Xoom, Mastercard, Chase, Citibank, Intuit, Pershing, Credit One Bank, Target  
 RedCard, PayPal, and Discover.

27       <sup>2</sup> Yodlee was able to determine that Plaintiffs Rollier and Cottrell used IAV with Charles Schwab  
 28 only because Charles Schwab, unlike PayPal and Amazon Pay, had set up its IAV configuration to use an  
 optional name-matching feature.

Instead of moving this litigation forward, Plaintiffs appear to have focused their efforts on manufacturing problems to spin a misleading and inflammatory narrative that they should not be faulted for failing to substantiate their own claims. Yodlee addresses the purported discovery issues below only to the extent necessary to answer the most egregious of Plaintiffs' misstatements and will respond in full if and when Plaintiffs file a proper motion in accordance with Civil L.R. 37.

## II. JOINT LETTER BRIEF, ECF NO. 360

### A. Plaintiffs' Position

On September 21, 2013, the parties filed a joint letter brief concerning whether Yodlee should be compelled to produce certain "Account-Linking Data" responsive to Plaintiffs' Request for Production of Documents No. 2, Set Three. ECF No. 360. Plaintiffs will be prepared to discuss the issues raised in the joint letter brief at the status conference on October 23, 2023.

### B. Yodlee's Position

The October 23 case management conference is not a hearing on Plaintiffs' discovery disputes. Yodlee will be prepared to discuss the parties' September 21 letter (Dkt. No. 360) if the Court wishes to and will otherwise present discovery disputes to the Court as needed in accordance with Civil L.R. 37.

## III. YODLEE'S COPIES OF THE NAMED PLAINTIFFS' DATA

### A. Plaintiffs' Position

Two years ago, in August 2021, Plaintiffs requested Yodlee produce copies of the data it collected from the named Plaintiffs through its IAV service. Yodlee responded that it stores Plaintiffs' data not by user *name* but rather through alphanumeric user *codes* provided by third-party apps (*e.g.* PayPal). Yodlee claimed that to identify Plaintiffs' data in its systems, these third-party apps would need to identify the user codes that corresponded with the named Plaintiffs. Plaintiffs subpoenaed this information from PayPal in March 2023 and sent Yodlee the codes that PayPal produced in August 2023. After a month of delay, Yodlee claimed that the codes PayPal produced did not match the codes in its systems. Plaintiffs then requested new codes from PayPal, but PayPal claimed it did not possess the codes that Yodlee claimed it needed. Finally, after extensive meet-and-confers, PayPal identified a new set of potential codes last week, which Plaintiffs have provided to PayPal. It is not clear whether these are the codes Yodlee claims it needs to identify the named Plaintiffs' data in Yodlee's systems.

1 Plaintiffs have spent more than five months and seven meet-and-confers trying to navigate Yodlee  
2 and PayPal's competing explanations and believe that good faith cooperation on Yodlee and PayPal's part  
3 should have resolved this issue long ago. Absent a prompt resolution, Plaintiff will move the Court to  
4 compel Yodlee and PayPal to jointly identify the codes associated with the named Plaintiffs so that copies  
5 of their data can be produced.

6 **B. Yodlee's Position**

7 Approximately three years after filing this lawsuit, and over six months after the Court encouraged  
8 Plaintiffs to get their unique identifiers from PayPal, Plaintiffs sent Yodlee a set of codes that did not  
9 match anything in Yodlee's systems. Yodlee explained as much to Plaintiffs on September 11 and  
10 volunteered examples of GUID codes to facilitate Plaintiffs' efforts. Weeks of silence followed. Then,  
11 on the Friday before this statement was due, Plaintiffs provided Yodlee with a new set of identifiers and  
12 asked Yodlee to check its systems again for Plaintiffs' IAV user data from PayPal. Yodlee promptly  
13 searched its PayPal database using those identifiers and found no information related to Plaintiffs. Yodlee  
14 has no objection to attending a meeting with PayPal to work through the GUID issue.

15 **IV. INTERROGATORIES CONCERNING YODEE'S DATA PRACTICES**

16 **A. Plaintiffs' Position**

17 On July 14, 2023, Plaintiffs served interrogatories asking Yodlee, *inter alia*, to identify each  
18 category of data it collected through its IAV service, each category of collected data it then stored, and  
19 the time periods during which it collected and/or stored that data. Although this information is  
20 foundational to the case and indisputably within Yodlee's possession, Yodlee has not provided a complete  
21 response to Plaintiffs' interrogatories. Yodlee's interrogatory responses, among other deficiencies, do not  
22 address its collection and storage of users' bank login credentials and do not specify the time periods when  
23 it collected and stored each category of data.

24 When Plaintiffs sought to move to compel more complete interrogatory responses earlier this  
25 month, Yodlee committed to add specific information to its interrogatory responses by Friday, October  
26 13, 2023. The day before that deadline, however, Yodlee retracted its commitment and has not produced  
27 the supplemental interrogatory responses it agreed to. Because these interrogatories concern basic facts  
28 about Yodlee's data practices that are foundational to this case—*i.e.* what data Yodlee collected and

1 when—Plaintiffs will be moving to compel this information later this week. Plaintiffs may also seek a  
2 modest amount of cost-shifting sanctions due to Yodlee’s inappropriate tactics, which improperly delayed  
3 motion practice and caused Plaintiffs’ counsel to incur unnecessary fees.

4 **B. Yodlee’s Position**

5 Plaintiffs misstate the facts. Plaintiffs have been receiving responsive documents and testimony  
6 from Yodlee addressing these foundational IAV issues since 2022, and in fact cited that evidence in their  
7 PayPal summary judgment briefing. Despite this, Plaintiffs have spent much of the past summer churning  
8 out follow-up demands requiring Yodlee to expend additional time and resources restating and  
9 repackaging the same facts in duplicative interrogatory responses, and invariably threatening Yodlee with  
10 motions practice that would further burden both Yodlee and the Court. In the latest example of this,  
11 Plaintiffs sent Yodlee a letter on September 28 requesting information that had already been provided in  
12 prior productions, testimony, and written discovery responses. Yodlee nevertheless summarized that  
13 information again for Plaintiffs in a response letter on October 12, tracking the questions in Plaintiffs’  
14 September 28 letter and providing illustrative references to where the information could be found in  
15 Yodlee’s prior productions and discovery responses. Yodlee never committed to anything else, let alone  
16 “retracted” any such commitment. Yodlee is troubled by Plaintiffs’ persistent attempts to assign to Yodlee  
17 positions it has never taken, and to describe events that never occurred. Yodlee will respond accordingly  
18 if and when Plaintiffs file a motion.

19 **V. INFORMATION ON YODEE’S DATA SALES**

20 **A. Plaintiffs’ Position**

21 In August 2021, Plaintiffs requested that Yodlee produce documents reflecting the prices at which  
22 it has sold user transaction data. Yodlee objected on the grounds that it purportedly does not sell the data  
23 it collects through IAV, only the data it collects through other products. While this claim is false, it also  
24 is not a basis to withhold information about its data sales. The prices Yodlee charges for user transaction  
25 data (whether collected via IAV or not) is relevant because it provides a benchmark for valuing the  
26 transaction data Yodlee collected from Plaintiffs and thus will help establish Plaintiffs’ damages. Plaintiffs  
27 anticipate moving to compel should Yodlee continue to withhold information about the resale value of the  
28 user transaction data it collects.

1           **B. Yodlee's Position**

2           Yodlee does not sell or license data provided by PayPal users via IAV. Plaintiffs have identified  
 3 no basis for disputing this fact. Plaintiffs' attempt to obtain profit information concerning data products  
 4 not at issue in this case is yet another improper attempt to expand the scope of this litigation in  
 5 contravention of the Court's prior rulings, including its May 8 order "that the scope of discovery is limited  
 6 to IAV products." (Dkt. No. 319.)

7           **VI. IMAGES OF PAYPAL'S ACCOUNT-LINKING SCREENS**

8           **A. Plaintiffs' Position**

9           In August 2022, Plaintiffs requested that Yodlee produce images of the user-interface screens that  
 10 users were shown when linking their bank accounts via Yodlee's IAV service ("Account-Linking  
  Screens"). These Account-Linking Screens lie at the heart of this case because they contain the disclosures  
 12 or omissions relevant to assessing user consent, or lack thereof. In January 2023, Yodlee claimed it had  
 13 produced all images of the PayPal Account-Linking Screens in its possession, but Yodlee's production  
 14 was incomplete. Plaintiffs therefore re-subpoenaed PayPal in March 2023 for the complete set of Account-  
 15 Linking Screens that were in effect during the class period, as well as documents showing when each set  
 16 of Account-Linking Screens took effect. PayPal produced *some* additional documents between March-  
 17 September 2023, but still has not produced a complete record of the Account-Linking Screens that were  
 18 in effect during the class period. Last week, after more than four meet-and-confers, PayPal declined to  
 19 produce any additional Account-Linking Screens. Plaintiffs plan to move to compel in the next two weeks  
 20 if PayPal's position does not change.

21           **B. Yodlee's Position**

22           Yodlee takes no position as to this discovery dispute between Plaintiffs and PayPal.

23           **VII. FORTHCOMING DEPOSITIONS**

24           **A. Plaintiffs' Position**

25           As Plaintiffs noted in the prior Joint Case Management Statement (ECF No. 316), Plaintiffs intend  
 26 on taking the remaining 7.5 depositions of Yodlee, a rule 30(b)(6) deposition of PayPal, and, if necessary,  
 27 depositions of other relevant nonparties. Plaintiffs have been unable to take these depositions given the  
 28 amount of evidence that remains outstanding, as described above.

1           **B. Yodlee's Position**

2       In the five months since the last case management statement, in which Plaintiffs claimed they  
 3       intended to take 7.5 additional depositions of Yodlee witnesses (Dkt. No. 316 at 4), Plaintiffs have not  
 4       identified or noticed a single Yodlee witness for deposition. Plaintiffs are not entitled to exhaust every  
 5       purported dispute and loose end before proceeding with depositions, and their suggestion that ongoing  
 6       discovery somehow renders them incapable of moving forward is belied by the depositions they took last  
 7       year. Yodlee, for its part, has completed its depositions of the five named Plaintiffs remaining in this case.

8           **VIII. PROPOSED CASE SCHEDULE**

9           **A. Plaintiffs' Position**

10       Plaintiffs do not favor any changes to the case schedule.

11           **B. Yodlee's Position**

12       No changes to the case schedule are warranted at this stage.

13           **IX. ALTERNATIVE DISPUTE RESOLUTION**

14           **A. Plaintiffs' Position**

15       Plaintiffs sent Yodlee a settlement demand in March 2023 and offered to mediate. Yodlee has not  
 16       made a counteroffer or agreed to mediation.

17           **B. Yodlee's Position**

18       Plaintiffs still have not provided a credible settlement demand; accordingly, Yodlee does not  
 19       believe alternative dispute resolution would be productive at this time.

21       DATED: October 16, 2023

22           Respectfully submitted,

23           \_\_\_\_\_  
 24           */S/ Megan L. Rodgers*  
 25           Megan L. Rodgers

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## **FILER'S ATTESTATION**

Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that each of the other signatories have concurred in the filing of this document.

/S/ Megan L. Rodgers  
Megan L. Rodgers